



City of Loma Linda Official Report

Floyd Petersen, Mayor
Karen Hansberger, Mayor pro tempore
Robert Christman, Councilmember
Stan Brauer, Councilmember
Robert Ziprick, Councilmember

COUNCIL AGENDA: January 13, 2004

TO: City Council

VIA: Dennis R. Halloway, City Manager

FROM: T. Jarb Thaipejr, Public Works Director/City Engineer *T.J.T.*

SUBJECT: Approve an agreement for Professional Services to Prepare the San Timoteo Creek Habitat Enhancement Plan

RECOMMENDATION:

It is recommended that the City Council approve an agreement for professional services to prepare the San Timoteo Creek Habitat Enhancement Plan/ Environmental Protection Agency (EPA) Grant project with The Dangermond Group for an amount not to exceed \$189,167.

BACKGROUND:

The EPA has provided a grant to enhance habitat along the San Timoteo creek. The City of Loma Linda has been recognized as lead agency for this project. On November 18, 2003, the City Council approved an agreement with Lilburn Corporation to prepare environmental documents for the subject project.

A Request for Proposal (RFP) was solicited from six consultant firms. Two proposals were received and evaluated by staff. Based on that evaluation, staff is recommending the selection of The Dangermond Group to prepare the San Timoteo Creek Habitat Enhancement plan.

ANALYSIS:

None.

ENVIRONMENTAL:

The Lilburn Corporation is currently preparing the environmental documents.

FINANCIAL IMPACT:

Funding for this project has been budgeted in account number 25-7300-1830.

Attachment

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 13th day of January, 2004, by and between THE CITY OF LOMA LINDA, a Municipal Corporation (hereinafter referred to as "CITY") and The Dangermond Group, a California corporation/a partnership/a sole proprietor, (hereinafter referred to as "CONSULTANT").

A. RECITALS

1. CITY has heretofore issued its Request for Proposal pertaining to the performance of professional services with respect to the San Timoteo Creek Habitat Enhancement Project ("PROJECT" hereinafter);
2. CONSULTANT has now submitted its proposal for the performance of such services;
3. CITY desires to retain CONSULTANT to perform professional services necessary to render advice and assistance to CITY in the preparation of PROJECT;
4. CONSULTANT represents that it is qualified to perform such services and is willing to perform such services as hereinafter defined.

NOW, THEREFORE, IT IS AGREED by and between CITY and CONSULTANT as follows:

B. AGREEMENT

1. **Definitions:** The following definitions shall apply to the following terms, except where the context of this Agreement otherwise requires:

- a. **PROJECT:** The preparation of all of the necessary maps, plans, reports and documents with respect to the Project as outlined in the Scope of Services described in Exhibit "1" hereto and the Environmental Protection Agency (EPA) grant application (incorporated herein by reference);

- b. **SERVICES:** Such professional services as are necessary to be performed by CONSULTANT in order to complete the PROJECT;

- c. **COMPLETION OF PROJECT:** The date of completion of all phases of the PROJECT, including any and all procedures, development plans, maps, surveys, plan documents, technical reports, meetings, oral presentations and attendance by CONSULTANT at public hearings regarding the Project acceptance for construction is set forth in Exhibit "1" Project Schedule attached hereto.

2. CONSULTANT agrees as follows:

- a. CONSULTANT shall forthwith undertake and complete the PROJECT in accordance with Exhibit "1" and applicable with Federal, State and CITY statutes, regulations, ordinances and guidelines, all to the reasonable satisfaction of the CITY.

b. CONSULTANT shall supply copies of all maps, surveys, reports, plans and documents (hereinafter collectively referred to as "documents") including all supplemental technical documents, as described in Exhibit "1" to CITY within the time specified in Project Schedule, Exhibit "1" hereto. Copies of the documents shall be in such numbers as are required by Exhibit "1". CITY may thereafter review and forward to CONSULTANT comments regarding said documents and CONSULTANT shall thereafter make such revisions to said documents as are deemed necessary. CITY shall receive revised documents in such form and in the quantities determined necessary by CITY.

c. CONSULTANT shall, at CONSULTANT'S sole cost and expense, secure and hire such other persons as may, in the opinion of CONSULTANT, be necessary to comply with the terms of this Agreement. In the event any such other persons are retained by CONSULTANT, CONSULTANT hereby warrants that such other persons shall be fully qualified to perform services required hereunder. CONSULTANT further agrees that no subcontractor shall be retained by CONSULTANT except upon the prior written approval of CITY.

d. CONSULTANT shall, at CONSULTANT'S sole cost and expense, secure the required issuance of a City Business License as a condition precedent to being engaged as a CONSULTANT within the CITY.

3. CITY agrees as follows:

a. To pay to CONSULTANT on a time and materials basis not to exceed \$189,167 for the performance of the services required hereunder. This sum shall cover the cost of all staff time and all other direct and indirect costs or fees, including the work of employees, consultants and subcontractors to CONSULTANT. Payment to CONSULTANT, by CITY, shall be made in accordance with the Schedule set forth in Exhibit "1".

b. Payments to CONSULTANT shall be made by CITY in accordance with the invoices submitted by CONSULTANT, on a monthly basis, and such invoices shall be paid within a reasonable time after said invoices are received by CITY. All charges shall be detailed in Exhibit "1" either with respect to hourly rates or lump sum amounts for individual tasks. In no event, however, shall said invoices exceed ninety-five percent (95%) of individual task totals described in Exhibit "1".

c. CONSULTANT agrees that, in no event, shall CITY be required to pay to CONSULTANT any sum in excess of ninety-five percent (95%) of the maximum payable hereunder prior to receipt by CITY of all final documents, together with all supplemental technical documents, as described herein acceptable in form and content to CITY. Final payments shall be made not later than sixty (60) days after presentation of final documents and acceptance thereof by CITY.

d. Additional Services: Payments for additional services requested, in writing, by CITY, and not included in the Scope of Services as set forth in Exhibit "1" hereof, shall be paid on a reimbursement basis in accordance with the fee schedule set forth in Exhibit "1". Charges for additional services shall be invoiced on a monthly basis and shall be paid by CITY within a reasonable time after said invoices are received by CITY.

4. CITY agrees to provide to CONSULTANT:

a. Information and assistance as set forth in Exhibit "1" hereto;

b. Photographically reproducible copies of maps and other information, if available, which CONSULTANT considers necessary in order to complete the Project;

c. Such information as is generally available from CITY files applicable to the Project;

d. Assistance, if necessary, in obtaining information from other governmental agencies and/or private parties. However, it shall be CONSULTANT'S responsibility to make all initial contact with respect to the gathering of such information.

5. Ownership of Documents: All documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT pursuant to this Agreement shall be considered the property of the CITY and, upon payment for services performed by CONSULTANT, such documents and other identified materials shall be delivered to CITY by CONSULTANT. CONSULTANT may, however, make and retain such copies of said documents and materials as CONSULTANT may desire.

Any use or reuse of the plans and specifications, except at the site intended, or any alteration or revision of the plans or specifications by the CITY, its staff, or authorized agents without the specific written consent of the CONSULTANT shall be at the sole risk of CITY. The CITY agrees to hold harmless and indemnify the CONSULTANT against all damages, claims and losses, including defense costs arising out of any such alteration or revision, or use or reuse at another site, by CITY, its staff or authorized agents.

6. Termination: This Agreement may be terminated by CITY upon the giving of written "Notice of Termination" to CONSULTANT at least fifteen (15) days prior to the date of termination specified in said Notice. In the event this Agreement is so terminated, CONSULTANT shall be compensated at CONSULTANT'S applicable hourly rates as set forth in Exhibit "1", on a pro rata basis with respect to the percentage of the PROJECT completed as of the date of termination. In no event, however, shall CONSULTANT receive more than the maximum specified in paragraph 3a above. CONSULTANT shall provide to CITY any and all documents, data, studies, surveys, drawings, maps, models, photographs and reports, whether in draft or final form, prepared by CONSULTANT as of the date of termination. CONSULTANT may not terminate this Agreement except for cause.

7. Notices and Designated Representatives: Any and all notices, demands, invoices and written communications between the parties hereto shall be addressed as set forth in the Paragraph 7. The below-named individuals, furthermore, shall be those persons primarily responsible for the performance by the parties under this Agreement:

CITY:

Name: T. Jarb Thaipejr
Title: Director of Public Works/ City Engineer
25541 Barton Road
Linda, CA 92354

CONSULTANT:

Name: Pete Dangermond
Title: Executive Director
Address: 4075 Mission Inn Avenue, Riverside, CA 92501

Any such notices, demands, invoices or written communications, by mail, shall be deemed to have been received by the addressee forty-eight (48) hours after deposit thereof in the United States Mail, postage prepaid, and properly addressed as set forth above.

8. Insurance: CONSULTANT shall neither commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to CITY, naming the City of Loma Linda as an additional insured, nor shall CONSULTANT allow any subcontractor to commence work on a subcontract until all insurance required of the subcontractor has been obtained. CONSULTANT shall take out and maintain at all times during the term of this Agreement the following policies of insurance:

a. Workers' Compensation Insurance: Before beginning work, CONSULTANT shall furnish to CITY a Certificate of Insurance as proof that it has taken out full Workers' Compensation Insurance for all persons whom it may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California.

In accordance with the provisions of California Labor Code, Section 3700, every employer shall secure the payment of compensation to his employees. CONSULTANT shall, prior to commencing work, sign and file with CITY a certification as follows:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

b. Public Liability and Property Damage: Throughout the term of this Agreement, at CONSULTANT'S sole cost and expense, CONSULTANT shall keep, or cause to be kept, in full force and effect, for the mutual benefit of CITY and CONSULTANT, comprehensive, broad form, general public liability and automobile insurance against claims and liabilities for personal injury, death, or property damage arising from CONSULTANT'S activities, providing protection of at least One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person or for any one accident or occurrence, and at least One Million Dollars (\$1,000,000.00) for property damage.

c. General Insurance Requirements: All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California and policies required under Paragraph 8b shall name, as additional insured, CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer, insured and all subcontractors waive the right of subrogation against CITY and CITY'S elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by CITY; and (3) they cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to CITY by certified mail. CONSULTANT shall furnish CITY with copies of all such policies promptly upon receipt of them, or certificate evidencing the insurance. CONSULTANT may effect for its own account insurance not required under this Agreement.

9. Indemnification: CONSULTANT shall defend, indemnify and save harmless CITY, its elected and appointed officials, officers, agents and employees from all liability from loss, damage, or injury to persons or property, including the payment by CONSULTANT of any and all legal costs and attorneys' fees, in any manner arising out of any negligent or intentional or willful acts or omissions of CONSULTANT in the performance of this Agreement, including, but not limited to, all consequential damages to the maximum extent permitted by law. Said indemnification shall include any claim than CONSULTANT, or CONSULTANT'S employees or agents, are considered to be employees of the CITY or are entitled to any employee benefits from CITY, including but not limited to those available under Public Employees Retirement Law.

10. Assignment: No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part, by CONSULTANT without the prior written consent of CITY.

11. Independent Contractor: The parties hereto agree that CONSULTANT and its employees, officers, and agents are independent contractors under this Agreement and shall not be construed for any purpose to be employees of CITY.

12. Compliance With Laws: CONSULTANT shall comply with all applicable laws in performing its obligations under this Agreement.

13. Confidentiality: Information and materials obtained by the CONSULTANT from CITY during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the CONSULTANT for any purpose other than the performance of this Agreement.

14. Discrimination: The CONSULTANT agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the CONSULTANT agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

15. Government Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. Attorneys' Fees: In the event any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by the Court to be reasonable.

17. Entire Agreement: This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any party which is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only as it is in writing, signed by all parties.

IN WITNESS WHEREOF, the parties hereto execute this Agreement as of the day and year first set forth above.

CONSULTANT:

CITY:

City of Loma Linda, A Municipal Corporation

By: _____
Pete Dangermond

By: _____
Floyd Petersen

Title: Executive Director

Title: Mayor

And,

The Dangemond Group,
A California Corporation

ATTEST:

By: _____
Pete Dangermond

Pamela Byrnes-O'Camb, City Clerk

Title: Principal

EXHIBIT "1"

SCOPE OF SERVICES

(See attached proposal)

WORKERS' COMPENSATION INSURANCE CERTIFICATION

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

Signature

Date